IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CIVIL REVISION No.2763 of 1992

DATE OF DECISION: 05.09.2007

M/s United India Insurance Company Ltd. ……Petitioner

Versus

M/s Jain Crokery House and another ……Respondents

CORAM: HON'BLE MR.JUSTICE HEMANT GUPTA.

Present: Mr.Munishwar Puri, Advocate for the petitioner.
Mr.Sudhir Mittal, Advocate for the respondents.

J U D G M E N T

HEMANT GUPTA, J.

The challenge in the present revision petition is to the order passed by the learned trial Court on 31.7.1979 declining the application filed by the petitioner under Section 33 of the Indian Arbitration Act, 1940 challenging the existence and validity of an Arbitration agreement and the reference to the Arbitrator. The challenge is also to the order passed by the learned First Appellate Court dated 3.2.1992 affirming the order passed by the learned trial Court.

The respondent No.1 had taken two insurance policies for the sum of Rs.25000/- and Rs.22000/- from the Indian Mutual General Insurance Society and Union Cooperative Insurance Society Limited respectively for burglary in respect of its stocks and trade. Both the aforesaid companies stand merged with the petitioner. Respondent No.1 alleged that there was a theft in their shop on the intervening night of

7/8.8.1973. The claim in respect of such theft was lodged with the petitioner, but on 14.1.1975, the petitioner repudiated the claim of respondent No.1. Subsequently, respondent No.1 sought the appointment of an Arbitrator, but the petitioner did not agree to the appointment of an Arbitrator in terms of Condition No.14 of the policy. Subsequently, respondent No.2 issued a notice calling upon the petitioner to appear before him on the ground that he had entered upon a reference as sole Arbitrator at the instance of respondent No.1, which action was challenged by the petitioner.

The petitioner challenged the authority of respondent No.2 to continue with the reference, on the ground that in view of total denial of the liability and repudiation of the claim, the clause regarding the arbitration in the policies does not subsists and that there was no point of difference which can be referred to an Arbitrator. On behalf of respondent No.1, the stand was taken by way of filing of the written statement that burglary in respect of stock and trade was committed in the shop on the intervening night of 7/8.8.1973. The mere fact that respondent No.1 has used the word `theft' instead of `burglary' would not in any way relieve the petitioner of its liability under the Insurance policies. The repudiation of the claim by the petitioner was said to be illegal and against the policy conditions.

Before the learned trial Court, the petitioner examined its Superintendent Shri Mohinder Sain Aggarwal as AW-1. He has deposed that the Company has repudiated the claim of the respondent on the ground that it was not covered by the policy conditions. On the other hand, respondent No.1 examined Shri Rajinder Parshad, partners of respondent No.1-firm, as RW-1 who deposed that a theft took place in their shop and

he reported the matter to the police and also inform the bank by telephone. The petitioner sent two Surveyors who prepare the survey report, but the Insurance Company did not pay the amount as assessed by the Surveyors, but were prepared to pay half of the amount of the claim assessed by the Surveyors.

The learned trial Court dismissed the application filed by the petitioner on the ground that there is no rebuttal to the statement of RW-1 Rajinder Parshad and, thus, the dispute regarding difference in the amount payable has arisen which is liable to be decided by an Arbitrator. Still further, it was found that since the original policies or its copies have not been produced, therefore, it cannot be said that the petitioner was entitled to repudiate the claim of respondent No.1. Thus, it was found that the arbitration agreement cannot be said to be abrogated.

In appeal, the said findings were affirmed.

Learned counsel for the petitioner has vehemently argued that in case of repudiation of the entire claim, there is no dispute or difference, which can be referred to an Arbitrator in terms of Condition No.14 of the Policy. It is contented that in terms of Condition No.14, the matter can be referred to an Arbitrator only in respect of quantum of the dispute and not where very existence of the claim is denied. Out of the judgments referred to by learned counsel for the petitioner, it may be noticed that the judgment in F.A.O. No.32 of 1973, "*Life Insurance Corporation of India versus Smt. Parkash Kaur",* decided on 24.9.1973 and the judgment of Hon'ble Supreme Court of India in "*The Vulcan Insurance Company Limited versus Maharaj Singh and another, AIR 1976 Supreme Court-287",* are the relevant and need to be considered.

In *Parkash Kaur's case (supra)*, the insured lodged a claim on account of damage in fire broke out in his premises. An application was filed by the insured under Section 20 of the Indian Arbitration Act, 1940 requiring the Insurance Company to file the agreement regarding the arbitration for reference of the matter for decision by an Arbitrator. The stand of the Insurance Company was that the fire was not accidental and the same was set by the insured herself. In the said case, a finding was returned that the claim was based on the dishonesty of the claimant. The observation that it was not a difference as to the amount of loss or damage payable to the insured which could be referred to an Arbitrator, but the primary reason given by the Court was repudiation of the Insurance policy itself on the allegation of fraud.

In the present case, the petitioner has not repudiated the Insurance Policy. There is no allegation of fraud. As a matter of fact, the statement of AW-1 Mohinder Sain Aggarwal is to the effect that the claim was not admissible "in terms of the conditions of the policy". It is, thus, apparent that the policy is not in dispute, but whether the claim is admissible in terms of the policy or not is the dispute between the parties. Therefore, the aforesaid judgment, referred to by the petitioner, is not applicable to the facts of the present case.

In *Vulcan Insurance Co.'s case (supra),* the Court found that the Company was not required to mention any reason of rejection of the claim, nor did it mention any. It was held that the repudiation of the claim by the Company could not amount to the raising of a dispute referable to the Arbitrator It was held that if the rejection of the claim by the Company is on the ground that the insured has suffered no loss as a result of the fire or

the amount of loss was not to the extent claimed by him, then and then only, a difference could have arisen as to the amount of any loss or damage within the meaning of Clause 18 of the Policy. It was held to the following effect:-

> "xx xx xx xx
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> 11. Although the surveyors in their letter dated 26.4.1963 had raised a dispute as to the amount of any loss or damage alleged to have been suffered by respondent No.1, the appellant at no point of time raised any such dispute. The appellant company in its letter dated the 5th and the 29th July, 1963 repudiated the claim altogether. Under Clause 13, the Company was not required to mention any reason of rejection of the claim nor did it mention any. But the repudiation of the claim could not amount to the raising of a dispute as to the amount of any loss or damage alleged to have been suffered by respondent No.1. If the rejection of the claim made by the insured be on the ground that he had suffered no loss as a result of the fire or the amount of loss was not to the extent claimed by him, then and then only, a difference could have arisen as to the amount of any loss or damage within the meaning of Clause 18. In this case, however, the company repudiated its liability to pay any amount of loss or damage as claimed by respondent No.1. In other words, the dispute raised by the company, appertained to its liability to pay any amount or damage whatsoever, in our opinion, therefore, the dispute raised by the appellant company was not covered by the arbitration clause.
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> xx xx xx xx"

In the present case, the petitioner has not produced the Insurance Policy and, therefore, the detailed terms and conditions of the Policy have been withheld from the Court, but the Condition No.14, which is relevant and reproduced in the orders passed by the Courts, reads as under:-

> "14. If any difference arises as to the amount of any loss or damage, such difference shall independently of all other questions, be referred to the decision of an Arbitrator to be appointed in writing by the parties in difference or, if then that cannot agree upon a single arbitrator, to the decision of the two disinterested persons as arbitrators, of whom one shall be appointed in writing by each of the parties, within two calendar months after having been required so to do in writing by the other party……"

The matter, which is required to be decided by an Arbitrator, is in respect of any difference arisen as to the amount of any loss or damages. Such loss or damage can be the entire claim or the quantification of the claim as well. In the present case, the letter repudiating the claim of respondent No.1 is not on record. But the statement of AW-1 Mohinder Sain Aggarwal is to the effect that in terms of the conditions of the Policy, the claim was not found to be maintainable. Thus, it is apparent that the Insurance Policy subsists containing an arbitration clause. If an arbitration agreement is subsisting, the difference in respect of the entire claim or part of the claim is required to be adjudicated upon by an Arbitrator alone. In fact, in *Vulcan Insurance Company's case (supra),* the Court was interpreting Clause 13 of the Insurance Policy which provides that if the

claim is rejected and the suit is not commenced within three months after such rejection, all benefits under the Policy shall be forfeited. Still further, the Court has held that mere repudiation of the claim will not give rise to a dispute to the amount of any loss or damage. But, in the present case, it is not mere repudiation of the claim, but denial of the claim in terms of the Policy condition, which is in dispute. Such controversy can be adjudicated upon by an Arbitrator only as the Arbitrator is required to examine whether in terms of the Policy conditions, the insured is entitled to any claim or not. Such was not the dispute raised and decided by the Hon'ble Supreme Court in the aforesaid judgment.

Thus, I do not find any illegality or irregularity in the orders passed by the learned Courts below which may warrant interference of this Court in exercise of its revisional jurisdiction.

The revision petition stands dismissed.

05-09-2007 **(HEMANT GUPTA)**
mohinder* **JUDGE